

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

LEONARD A. SZPLETT,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:19-cv-02500
)	
KENCO LOGISTIC SERVICES, LLC, a)	Judge Gary Feinerman
Tennessee Limited Liability Company, Mars,)	Magistrate Judge Young B. Kim
Inc., The Hartford, DAVID JABALEY, MARIO)	
LOPEZ, TAMMI FOWLER, PAULA HISE,)	
TRACE SPIER, ROBERT COFFEY, TODD)	
MOORE, JAY ELLIOT. DAVID CAINES,)	
MICHAEL MANZELLO, DWIGHT CRAWLEY,)	
and KELVIN WALSH,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO DISMISS SZPLETT'S SECOND AMENDED
COMPLAINT (DKT. NO. 53)**

DEFENDANTS, Kenco Logistics Services, LLC, Kelvin Walsh, Paula Hise, Tammi Fowler, David Jabaley, Mike Manzello, David Caines, Trace Spier, Jay Elliott and Dwight Crawley, (collectively “the Kenco Defendants”) by and through their undersigned Counsel, move to dismiss Plaintiff Leonard Szplett’s Amended Complaint, with prejudice, and in support thereof, state as follows:

1. On September 19, 2019 the Court dismissed Szplett’s Amended Complaint, finding that “the complaint violates Civil Rule 8(a)(2) because its length and disorganization make it incoherent and unintelligible.” Dkt. No. 52.

2. On October 17, 2019, Szplett filed a Second Amended Complaint against the Kenco Defendants, and other Defendants. Dkt. No. 52.

3. Disregarding the Court's dismissal order, Szplett's Second Amended Complaint fails to cure the substantive and procedural defects that were present in his prior complaints; the complaint continues to be incoherent, and time-barred as to the Kenco Defendants.

4. Kenco employed Leonard Szplett as an office manager at the Manteno, Illinois Mars warehouse until his termination on March 29, 2015. Szplett was terminated when Kenco lost its contract at the warehouse, and all employees at his location were terminated.

5. More than four year after his termination, Szplett brings this employment discrimination claims against the Kenco Defendants pursuant to 42 U.S.C. §1981.

6. Taking Szplett's allegations as true for purposes of a Motion to Dismiss, any such claims are time-barred and should be dismissed with prejudice because the four-year statute of limitations applies and therefore, the claims are untimely. 28 U.S.C. §1658.

7. In accordance with Fed. R. Civ. Pro. 12(b)(6) the Court should dismiss a complaint where the factual allegations do not state a plausible claim for relief. The running of the statute of limitations is an affirmative defense and may be raised on a 12(b)(6) motion to dismiss.

8. Additionally, Szplett's Second Amended Complaint is largely incoherent and grossly violates the short, plain statement requirements of Fed. R. Civ. Pro. 8(a) and the Court's prior dismissal order. Given that Szplett has now had an opportunity to amend, dismissal with prejudice is appropriate.

9. The Kenco Defendants reference and incorporate all arguments contained in their Memorandum in Support of their Motion to Dismiss Szplett's Second Amended Complaint as though fully set forth herein.

WHEREFORE, for all the reasons stated herein, and in Defendants accompanying memorandum of law, DEFENDANTS, Kenco Logistic Services, LLC, Kelvin Walsh, Paula Hise, Tammi Fowler, David Jabaley, Mike Manzello, David Caines, Trace Spier, Jay Elliott and Dwight Crawley request that the Court dismiss Szplett's Second Amended Complaint with prejudice in accordance with Fed. R. Civ. Pro. 12(b)(6) and grant such additional relief as the Court deems proper.

Dated: November 4, 2019

Respectfully submitted,

**KENCO LOGISTICS SERVICES, LLC,
KELVIN WALSH, MIKE MANZELLO,
DAVID JABALEY, TAMMI FOWLER,
PAULA HISE, TRACE SPIER, DAVID
CAINES, DWIGHT CRAWLEY AND
JAY ELLIOTT**

By: /s/ Jody Wilner Moran
One of Their Attorneys

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CERTIFICATE OF SERVICE

I, Julia P. Argentieri, an attorney, hereby certify that on November 4, 2019, I electronically filed a copy of the foregoing **DEFENDANTS' MOTION TO DISMISS SZPLETT'S SECOND AMENDED COMPLAINT PURSUANT TO FED. R. CIV. PRO. 12(b)(6)** with the Clerk of the Court using the CM/ECF system. I further certify that a copy of the foregoing has been mail and email to the following non-ECF participant:

Leonard Szplett
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By: /s/ Julia P. Argentieri
One of the Attorneys for the Defendants